

STATE OF MICHIGAN
COURT OF APPEALS

DANA A. TAYLOR,

Plaintiff-Appellee,

v

WILLIAM TAYLOR, JR.,

Defendant-Appellant.

FOR PUBLICATION

February 22, 2018

9:05 a.m.

No. 336193

Washtenaw Circuit Court

LC No. 16-000787-DM

Advance Sheets Version

Before: MURPHY, P.J., and SAWYER and BECKERING, JJ.

SAWYER, J.

We are asked whether a presumed father may, in a divorce action, challenge his paternity of a child born during the course of the marriage despite the fact that he did not raise the issue within three years of the child's birth. We conclude that he may.

The parties were married in 2000. The youngest child born during the course of the marriage was born in 2011 while the parties were separated. Both parties agree that defendant is not the biological father of the child. In fact, this is supported by a DNA test that established that there is a 0% probability that defendant is the child's biological father.

Plaintiff filed for divorce in 2016, when the child was five years old. Defendant thereafter moved the trial court for a paternity determination pursuant to MCL 722.1443(1). Defendant also moved to join the person believed to be the biological father. The trial court eventually denied both motions, believing that it lacked jurisdiction because defendant had not raised the issue within three years of the child's birth. Defendant now appeals by delayed leave granted, and we reverse.

Resolution of this case depends on the proper interpretation of this sentence in MCL 722.1441(2):

If a child has a presumed father, a court may determine that the child is born out of wedlock for the purpose of establishing the child's paternity if an action is filed by the presumed father within 3 years after the child's birth or if the

presumed father raises the issue in an action for divorce or separate maintenance between the presumed father and the mother.^[1]

The trial court interpreted this sentence to mean that the issue must always be raised within three years of the child's birth; defendant argues that the three-year limitation does not apply if the issue is raised in a divorce action. We agree with defendant's interpretation.

We review de novo questions of statutory interpretation.² The word "or" is disjunctive and indicates a choice between alternatives.³ Thus, MCL 722.1441(2) presents two alternatives: first, when "an action is filed by the presumed father within 3 years after the child's birth," and second, when "the presumed father raises the issue in an action for divorce or separate maintenance between the presumed father and the mother." The three-year limitation only applies in the first situation, and this case involves the second situation.

It is true that the words "or" and "and" are often used erroneously.⁴ But "the words are not interchangeable and their strict meaning 'should be followed when their accurate reading does not render the sense dubious' and there is no clear legislative intent to have the words or clauses read in the conjunctive."⁵

There is no clear indication that the Legislature intended to use the word "and" rather than "or." Indeed, doing so would either make no change to the meaning of the statute or make a dramatic change to the meaning. If we simply conclude that the Legislature intended to use "and" instead of "or" the sentence would read like this:

If a child has a presumed father, a court may determine that the child is born out of wedlock for the purpose of establishing the child's paternity if an action is filed by the presumed father within 3 years after the child's birth ~~or~~ and if the presumed father raises the issue in an action for divorce or separate maintenance between the presumed father and the mother.

This reading would seem to present the court with the same two different avenues to determine that a child was born out of wedlock without extending the three-year limitation to divorce and separate maintenance cases.

¹ Defendant is the presumed father because he was married to plaintiff at the time of the child's conception or birth. MCL 722.1433(e).

² *Demski v Petlick*, 309 Mich App 404, 426; 873 NW2d 596 (2015).

³ *Stock Bldg Supply, LLC v Crosswinds Communities, Inc*, 317 Mich App 189, 204; 893 NW2d 165 (2016).

⁴ *Auto-Owners Ins Co v Stenberg Bros, Inc*, 227 Mich App 45, 50; 575 NW2d 79 (1997).

⁵ *Id.* at 50-51, quoting *Esperance v Chesterfield Twp*, 89 Mich App 456, 460-461; 280 NW2d 559 (1979) (quotation marks omitted).

To extend the three-year limitation to divorce cases, we would have to substitute the word “and” for both “or” and “if” so that the sentence would read as follows:

If a child has a presumed father, a court may determine that the child is born out of wedlock for the purpose of establishing the child’s paternity if an action is filed by the presumed father within 3 years after the child’s birth ~~or if~~ and the presumed father raises the issue in an action for divorce or separate maintenance between the presumed father and the mother.

Not only would this reading achieve plaintiff’s interpretation of applying the three-year limitation to divorce actions, it would also require that the presumed father raise the issue both in the divorce action and in a paternity action at the same time. That would create the additional restriction that there must be a divorce or separate maintenance action in order to raise the issue; there is nothing in the statute suggesting that this is what the Legislature intended. Indeed, it would take away the husband’s option of challenging the paternity of a child born during the course of the marriage without also filing for divorce.

Therefore, we are left with only one rather unremarkable conclusion: the Legislature intended exactly what it said. The presumed father may raise the issue in a paternity action filed within three years of the child’s birth OR in a divorce action (without regard to the child’s age). Accordingly, the trial court erred by denying defendant’s motions on the basis that the issue was raised in a divorce action more than three years after the child’s birth.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Defendant may tax costs.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Jane M. Beckering